

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5415 OF 1983

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

TADVI ISHWARBHAI LAXMANBHAI & ORS
VERSUS
THE STATE OF GUJARAT & ORS.

Appearance:

MR MTM HAKIM for petitioners
MR JM THAKORE, Advocate General, with
MR MG DOSHIT, for respondents.

Coram: S.K. Keshote, J
Date of decision: 3.3.97

C.A.V. JUDGMENT

Heard learned counsel for the parties.

2. The petitioner No.4, Shri Mohanbhai Chhanabhai Tadvi has expired and his legal heirs and representatives filed Civil Application No.5665 of 1996, for joining their names in Special Civil Applications. In the said Civil Application, Rule was issued, but in view of the fact that the petitioner No.4 was only a temporary employee and his services were terminated in October 1983, and he continued in service under interim order till he died, there is no need to bring his legal heirs and representatives on record.

3. The petitioners, five in all, filed this Special Civil Application before this Court and prayed therein that the respondents No.1 and 2 be restrained from terminating their services or from operating the orders of termination, if already passed. None of the respondents have filed any reply to the Special Civil Application. This Special Civil Application has come up for admission before this Court on 7.11.83, on which date notice was issued and interim relief in terms of para 14(a) has been granted. Leave to amend has been granted by this Court on 21.11.83. On 26th December 1983, the Court has made the order, "Rule. Interim relief to continue. To be heard alongwith Special Civil Application No.3006 of 1983".

4. The brief facts of the case are that the petitioners had registered their names with the Employment Exchange. They were called for interview and thereafter the petitioners were appointed in Government service. The petitioners No. 1 to 4 were appointed under the order dated 7/13.12.82 as workcharge clerks. The petitioner No.5 was appointed as workcharge clerk in the year 1983 and he joined on 2nd February 1983. The petitioners have come up with the case that they were initially appointed for a period of three years, but that is apparently an incorrect statement as it transpires from annexure 'A' that they have been appointed only for three months. The petitioners have further stated that their services were continued thereafter without any further formal order of appointment. The petitioners, in para-7 of Special Civil Application averred that they have reliably learnt that their services are sought to be terminated by respondent No.2 with effect from 31st October 1983. Having this apprehension of termination of services, the petitioners have approached this Court and this Court has protected them by granting interim relief. This writ petition has been filed by petitioners on 7th November 1983. After grant of interim relief in their

favour, they amended the Special Civil Application and the order of termination of their services has been brought on record as annexure 'B'. The action of the petitioners to approach this Court without accepting the order of termination is absolutely unfair. Be that as it may. The petitioners continued in service for all these years and the reply to Special Civil Application has also not been filed and as such, I consider it to be appropriate to decide this Special Civil Application on merits.

5. Challenge to the order of termination has been made on the ground of violation of provisions of Section 25F of the Industrial Disputes Act 1947. Though the petitioners have alternative remedy available, they have not availed this remedy under Article 226 of the Constitution of India. But only on the ground of availability of alternative remedy, I do not consider it to be appropriate to dismiss this petition at this stage when this Court has protected them by granting interim relief. Both the petitioners as well as the respondents have not brought on record of this case the subsequent events and developments which have taken place. This petition has been filed before about 13 years and as such all subsequent developments which have taken place should have been brought on record. Worse is the position of the State of Gujarat which has not even cared to file reply to Special Civil Application for all these years. So the fact remains that for all these years, the petitioners are working. In view of this fact, interest of justice will be met in case this Special Civil Application is disposed of with directions to the respondents to consider the case of petitioners for termination of services afresh and in case on consideration of their cases, it is decided to terminate their services, then a reasoned order may be passed and it can be done only after following the provisions of Section 25F of Industrial Disputes Act, 1947. However, the order made adversely to the petitioners may not be given effect to for 15 days from the date of despatch of the same. A copy of the order made against the petitioners shall be sent to the petitioners No.1 to 3 and 5 by registered post. So far as the petitioner No.4 is concerned, he is no more in services as he has expired. He was temporary employee. His services were terminated long back and he was continued in services only under the interim order till he expired on 3rd February 1990. In view of this fact, the Special Civil Application on behalf of petitioner No.4 is dismissed. So far as the other petitioners are concerned, the Special Civil Application is disposed of in aforesaid

terms. Rule stands disposed of accordingly. No order as to costs.

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(sunil)